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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,186	03/26/2004	Rajendra Tushar Moorti	15624US02	8020
23446 7590 05/19/2008 MCANDREWS HELD & MALLOY, LTD 500 WEST MADISON STREET SUITE 3400 CHICAGO, IL 60661				
EXAMINER				
YUN, EUGENE				
ART UNIT		PAPER NUMBER		
2618				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

## Application No.

10/810,186

## Applicant(s)

MOORTI ET AL.

## Examiner

EUGENE YUN

## Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 05 March 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/5/2008 has been entered.

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 13-24 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 13-24 fails to fall within a statutory category of invention. They are directed to the computer program itself, not a process occurring as a result of executing the program, a machine programmed to operate in accordance with the program nor a manufacture structurally and functionally interconnected with the program in a manner which enables the program to act as a computer component and realize its functionality. It's also clearly not directed to a composition of matter. Therefore it is non-statutory under 35 USC 101.

### ***Claim Rejections - 35 USC § 102***

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3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 10-12, 25, 26 and 34-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Grube et al. (US 5,542,119).

Referring to Claim 1, Grube teaches a method for choosing at least one signal path, the method comprising:

Determining a signal quality metric for each of a plurality of signal paths (see col. 4, lines 43-49 and step 508 in fig. 5);

Modifying the determined signal quality metric for each of the plurality of signal paths (see col. 5, lines 44-49 noting that the process in fig. 6 follows the process in fig. 5); and

Selecting at least one signal path based on the at least one of the modified signal quality metric (see col. 5, lines 61-67 noting that the "highest quality signal" is the selected signal path).

Referring to Claim 25, Grube teaches a system for choosing at least one signal path, the system comprising:

At least one processor that determines a signal quality metric for each of a plurality of signal paths (see col. 4, lines 43-49 and step 508 in fig. 5);

The at least one processor modifies the determined signal quality metric for each of the plurality of signal paths (see col. 5, lines 44-49 noting that the process in fig. 6 follows the process in fig. 5); and

The at least one processor selects at least one signal path based on the at least one of the modified signal quality metrics (see col. 5, lines 61-67 noting that the "highest quality signal" is the selected signal path).

Referring to Claims 2 and 26, Grube also teaches cycling through at least one of the signal paths (see col. 4, lines 43-49 noting that comparing signals is caused by sysling).

Referring to Claims 10 and 34, Grube also teaches at least one of a power level characteristic, a packet error rate characteristic, a bit error rate characteristic, a propagation channel characteristic, and an interference level characteristic (see col. 4, lines 49-52).

Referring to Claims 11 and 35, Grube also teaches at least one of the signal paths comprising an antenna (see antennas in 208 and 209 in fig. 2).

Referring to Claims 12 and 36, Grube also teaches a receive signal path (fig. 5) and a transmit signal path (fig. 6).

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 3-9 and 27-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grube in view of Hiben et al. (US 5,465,410).

Referring to Claims 3 and 27, Grube does not teach biasing the signal quality metric for each of the signal paths. Hiben also teaches biasing the signal quality metric for each of the signal paths (see col. 3, lines 62-67). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the teachings of Hiben to said device of Grube in order to provide a more efficient method of selecting the best quality signal.

Referring to Claims 4 and 28, Hiben also teaches increasing the signal quality metric for each of the plurality of signal paths by a fixed amount (see col. 3, lines 62-67).

Referring to Claims 5 and 29, Hiben also teaches increasing the signal quality metric for each of the plurality of signal paths by a predetermined amount (see col. 3, lines 62-67).

Referring to Claims 6 and 30, Hiben also teaches dynamically changing the signal quality metric for each of the plurality of signal paths (see col. 2, lines 42-47).

Referring to Claims 7 and 31, Hiben also teaches decreasing the signal quality metric for each of the plurality of signal paths by at least one of a fixed amount and a predetermined amount (see col. 3, lines 62-67).

Referring to Claims 8 and 32, Hiben also teaches selecting a signal path with a signal quality metric greater than at least one modified signal quality metric (see col. 4, lines 3-8).

Referring to Claims 9 and 33, Hiben also teaches selecting a signal path with a signal quality metric less than at least one modified signal quality metric (see col. 4, lines 3-8).

### ***Response to Arguments***

7. Applicant's arguments with respect to claims 1-36 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to EUGENE YUN whose telephone number is (571)272-7860. The examiner can normally be reached on 9:00am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew D. Anderson can be reached on (571)272-4177. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Eugene Yun  
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